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SUBJECT: UPDATE OF WORST FORMS OF CHILD LABOR INFORMATION FOR TDA

REF: STATE 149662

1. As requested in reftel, below is Embassy Nairobi's submission of information on Kenya's implementation of its international commitments to eliminate the worst forms of child labor, as required under the Trade and Development Act (TDA), for the Department of Labors preparation of the 2007 TDA report.

Incidence and Nature of Child Labor

According to UNICEF, 28% of boys and 27% of girls ages 5 to 14 were working in Kenya in 2005. More should be known about the incidence of child labor once the National Statistical Bureau releases the employment sector information collected in its 2005-06 National Household Survey.

Children work in the informal sector and with their families, in businesses as well as in agriculture. Children work in commercial and subsistence agriculture, and work with their families on tea, coffee, rice, and sugar plantations. Children work in herding and in fisheries. Children also work in domestic service, construction, transport, quarries, and mines, including informal gold mines. Street children work in the informal sector. Children are reported to engage in prostitution in bars, discos, brothels, massage parlors, and on the streets. While the majority of children exploited in prostitution are between 13 and 17, children as young as 9 are reported to be involved. Many girls who hawk or beg during the day reportedly engage in prostitution at night. In the agricultural sector, girls are sometimes forced to provide sexual services in order to obtain plantation work. Sudanese and Somali refugee children are also alleged to be involved in prostitution in Kenya. The growth of the tourism industry has been accompanied by an increase in child prostitution. Slavery and debt bondage are not problems in Kenya. Children working in domestic servitude in private households are often victims of trafficking or forced labor. Children escaping abusive domestic employment conditions in urban areas often become street children who must work, beg or steal to survive.

In 2006, UNICEF released a study on sex tourism and the commercial sexual exploitation of children along Kenya's coast. The report found that in the coastal towns of Malindi, Mombasa, Kilifi, and Diani, up to 15,000 girls, or up to 30% of all children 12 to 18 years, living in these areas engage in "casual" prostitution. It found that up to 3,000 additional boys and girls were engaged in prostitution on a full-time, year-round basis, and that 45% of girls involved in prostitution and sex tourism were between 12 and 13 when they first engaged in transactional sex.

Poverty, the death of one or both parents, and self-interest may contribute to a family's decision to place a child with better-off relatives, friends, or acquaintances, who may end up trafficking and/or exploiting the child. Child trafficking in Kenya occurs mainly through personal and familial networks. In 2007, a case in

which two children from rural Kenya were trafficked to Tanzania to work on a farm but were subsequently rescued highlighted the flow of child trafficking between Kenya, Uganda and Tanzania.

The HIV/Aids pandemic has rendered many children orphans. The pandemic creates orphans and exacerbates poverty, playing a substantial and increasing role in trafficking in persons in Kenya. In 2007, Human Rights Watch (HRW) said the Government of Kenya (GOK) was neglecting the over one million children orphaned by HIV/Aids. In a report entitled "In the Shadow of Death: HIV/Aids and Children's Rights in Kenya" HRW says the children are at a higher risk of human rights abuse, are forced to become breadwinners, pulled out of school and often forced to take on potentially dangerous labor that is inappropriate for them.

Child Labor Laws and Enforcement

Kenya has ratified ILO Convention 182. The Kenyan Constitution prohibits slavery, bonded and forced labor, and servitude, including by children. The Children's Act of 2001 prohibits all forms of exploitative and hazardous child labor and child sexual exploitation. The law (which law?) also prohibits children under 18 years from being recruited into the military and holds the government responsible for protecting, rehabilitating, and reintegrating into society children involved in armed conflict. On July 14, 2006, President Mwai Kibaki signed into law the Sexual Offenses Act, which specifically criminalizes child trafficking, trafficking for sexual exploitation, child prostitution, child pornography and sex tourism, rape and defilement. For child trafficking, the minimum penalty is 10 years of imprisonment plus a fine, and for trafficking for sexual exploitation, the minimum penalty is 15 years of imprisonment, a fine, or both. If a girl under 14 years is raped, the perpetrator is considered to have committed the lesser offense of "defilement" under Kenyan law. The new law also provides harsher penalties for defilement than it does for rape.

Additionally, in October 2007, the Kenyan Parliament passed and President Kibaki signed five labor reform laws that include important provisions on child labor.

One of them, the Employment Act of 2007 regulates minimum conditions for all employees, including children, in all aspects of employment. The Act defines a child as one aged 18 years and below, finally harmonizing the labor law with the Children's Act. The Act defines Worst Forms of Child Labor as "Work such as slavery, child prostitution, illicit activities or work likely to injure health of a juvenile - where juvenile relates to ages between 16 - 18 for young persons." The Minister for Labor and Human Resource Development is to define those specific activities that constitute worst forms of child labor to be prohibited completely. Labor and Police Officers are empowered to investigate child labor complaints. A Labor Officer is authorized to cancel an agreement of service between an employer and a child in any labor (except for on-the-job training as per the Industrial Training Act). Children shall not work between 6:30 in evening and 6:30 in the morning (night work).

Under the new Employment Act, children between 13 and 16 years can only be engaged in light work (as prescribed by the Minister) that is not harmful to their health or development or schooling needs unless it is part of vocational training. Nobody should enter into a written agreement with a child between 13 and 16 years of age, and no parent or guardian should allow such an agreement to be entered into with a child. Children of this age bracket shall not attend to machinery, or where underground works take place and access is by means of an inlet shaft or hole.

Since many children lack birth certificates, and a person must be at least 18 to receive a national ID card, it can be difficult to determine whether a worker is a legal child. The Act states that a Court may determine a dispute as to the true age of the child employed. Where it is not possible to get evidence of true age, the Labor Officer may use his opinion to determine the "true" age of that employee/child.

Any employer found employing a child in any activity not allowed by the Act shall be guilty of an offence and liable to a fine up to 200,000 shillings (about \$3,077), or up to (12) months

imprisonment, or both. If death or injury occurs to a child employed against the provisions of the Act, that employer shall be liable to a fine up to 500,000 shillings (about \$ 7,700) which shall be applied wholly or in part for benefit of the injured child or his/her immediate relatives, or up to (12) months imprisonment, or both.

The Minister may, after consultation with the National Labor Board, make rules providing for any of the purposes for the administration of the Act including:

- Prescribe anything which under this act is to be or may be prescribed.
- Prescribing the conditions of the employment of women, young persons or children in any specified trade or occupation.
- Prescribing the age at which a child may be employed.
- Requiring employers of children to furnish information and return to any specified officer in respect of such children or their employment or the conditions of their employment.

Any rules made under this section of the Employment Act may distinguish between juveniles of different ages and sexes and, in relation to women or juveniles, between different localities, occupations and circumstances.

Another new law, the Labor Institutions Act 2007, states that a Labor Officer may institute, appear or appeal on behalf of employees in any civil proceedings against his employer and may take into custody and return any child to his parents or guardian, whom he reasonably suspects to being employed in contravention of the Employment Act.

The Ministry of Labor and Human Resource Development is responsible for enforcing child labor laws, but, according to the U.S. Department of State, the Ministry's enforcement of the laws against child labor continues to be nominal.

The police anti-trafficking unit and the Criminal Investigation Department (CID) are responsible for combating trafficking, but, according to the U.S. Department of State, are not yet effective. The Kenya National Police are participating in a UN Organization for Drugs and Crime (UNODC)/INTERPOL anti-trafficking project through the Council of Eastern Africa Police Chiefs aimed at strengthening regional cooperation to prevent and combat trafficking in persons. The goals of the project are to develop a regional strategy, harmonize national anti-trafficking legislation with the Palermo Convention and the Additional Trafficking Protocol, establish or strengthen anti-trafficking offices and units, and develop anti-trafficking training material for law enforcement and prosecutorial officials. The project is in its early stage, and the level and effectiveness of Kenyan police participation is still to be determined.

Current Government Policies and Programs to Eliminate the Worst Forms of Child Labor

The Government of Kenya's National Development Plan for 2002-2008 recognizes child labor as a problem and calls for an evaluation of the impact of child labor on the individual and the country, as well as its implications on the quality of the future labor force. In February 2006, the government renewed the three-year mandate for the National Steering Committee on the Elimination of Child Labor. An Inter-Ministerial Coordination Committee on Child Labor chaired by the Vice President is responsible for setting general policy. The Ministry of Labor and Human Resource Development led an interagency review of the National Child Labor Strategy in 2006 and sent the policy to the Cabinet in mid-2007. Although the Cabinet did not approve the policy before being dissolved for the December 2007 general election, the next Cabinet should take it up. Although the free primary education, cash transfer program, and Ministry of Youth Affairs national strategy are not specifically targeted at child labor, their roles are noted in the National Child Labor Strategy, and government officials cite them and anti-poverty programs as Kenya's most effective efforts against child labor.

The GOK has mandated the Vice President's office, through the Ministry of Home Affairs, to spearhead the national anti-trafficking initiative, strongly supported by the International Organization for

Migration (IOM). The National Steering Committee to Combat Human Trafficking is chaired by the Ministry of Home Affairs (MOHA) Permanent Secretary, or the Director of Children's Services. The Steering Committee held several meetings in 2007 attended by key GOK ministries and other stakeholders, and appointed a subcommittee to draft a National Plan of Action (NPA) to combat trafficking. IOM provided training for the subcommittee, which presented an outline to the Committee in October, 2007. Agencies are providing comments, and the sub-committee will present a more detailed plan in January 2008.

Led by the Ministry of Labor and Human Resources Development, with the support of IOM, several ministries continued to implement a trafficking education, awareness, and inspection program for the country's 68 foreign employment agencies.

The GOK continues to participate in a four-year, \$5 million Project of Support to the Kenya Timebound Program on the Elimination of Child Labor funded by the U.S. Department of Labor (USDOL) and implemented by ILO-IPEC. The project aims to withdraw 15,000 children and prevent 7,000 children from exploitive labor in domestic service, commercial sexual exploitation, commercial and subsistence agriculture, fishing, herding, and informal-sector street work. The GOK collaborated with ILO-IPEC on the \$5.3 million, regional project, "Building the Foundations for Eliminating the Worst Forms of Child Labor in Anglophone Africa," funded by USDOL. The government also collaborated with ILO-IPEC on the implementation of two other child labor and education projects, including a \$1.53 million regional project to provide skills training to urban youth, funded by Canada, and a \$449,408 project to combat child domestic work in Tanzania and Kenya, funded by Sweden.

The GOK also collaborates on the four-year, \$14.5 million "Kenya, Uganda, Rwanda, and Ethiopia Together" (KURET) Project funded by USDOL and implemented by World Vision, in partnership with the International Rescue Committee and the Academy for Educational Development. The KURET Project aims to withdraw or prevent a total of 30,600 children from exploitive labor in HIV/AIDS-affected areas of these four countries through the provision of educational services. In the year ending August 31, 2007, KURET withdrew 2,117 and prevented 93 children from exploitive child labor in Kenya and provided education/training opportunities for them. KURET has withdrawn and rescued 6,495 children in Kenya 2004-2007. (Source: World Vision Technical Progress Report to USDOL, September 2007)

Kenya also participates in the five-year USDOL-funded "Reducing Child Labor through Education" (CIRCLE 1 and 2) global projects implemented by Winrock International through 2008; these projects work with community-based organizations to prevent or reduce exploitive child labor through the provision of education.

In April 2007, the GOK declared that primary education was mandatory. Parents have been prosecuted for not sending their children to school, but enforcement of this decision is rare. In September 2007, the Ministry of Home Affairs and the Communications Commission of Kenya (CCK) agreed to establish an emergency 116 toll free hotline together with an NGO to enable children and adults to report cases of abuse, trafficking and child labor, and to speak with trained personnel for counseling and referral to a national network of service providers for assistance. Technical difficulties postponed the launch of the service from November to December 2007.

In 2004, with support from UNICEF, the Ministry of Home Affairs Children's Department started a cash grant program to support poor households who take care of orphans and vulnerable children (OVC) in Kenya. By 2005, the program was scaled up to cover locations in 14 districts in the country. The objective is to provide a social protection system, but the program is expected to reduce child labor and trafficking. The GOK set the value of the transfer at Ksh 1,000-1,500 per household per month (about \$15-24). In financial year 2006-2007, the government allocated Ksh 56.6 million (about \$870,770) to the program. From 500 households two years ago, there are now 12,500 households enrolled in almost 40 districts. The target is 100,000 by 2012.

In 2006, the ECPAT Code of Conduct was signed by 30 hotels on the coast of Kenya, which is the destination of many foreign tourists

visiting the country. The Ministry of Tourism and Wildlife, and the Kenya Association of Hoteliers and Caterers have expressed their

desire for all hoteliers and other hospitality and tourism firms to sign and implement the ECPAT Code of Conduct. The Children's Department collaborated with NGOs to hold three workshops for local government officials and tourism sector stakeholders in Coastal Districts in 2007 to follow up on the UNICEF study and encourage implementation of the code of conduct.

Also in 2006, the government launched a national campaign to end violence against children, including child labor, trafficking, and sexual abuse. The initiative is being spearheaded by the Children's Department, in collaboration with representatives of UNICEF, NGOs, religious groups, and the private sector, and aims to raise \$1.4 million to protect children. The government has provided shelter and medical services to street children who were involved in commercial sexual exploitation, and it established District Advisory Children's Centers throughout the country to provide counseling, educational services, medical care, and fostering to orphans and vulnerable children who are at risk of becoming victims of trafficking.

UNICEF Kenya obtained pledges from the three leading presidential candidates to invest in quality education, child survival and social protection for vulnerable children, should one of them win the December 27, 2007 election.

The Ministry of Youth Affairs (MYA) announced in October 2007 a national strategy for youth development stressing improved education, training and employment facilities and opportunities that it developed with assistance from UNIDO and UNDP. The strategy proposes to invest about Ksh 110 billion (about \$1.7 billion) over the next five years with about Ksh50 billion (about \$770 million) coming from the government, and the rest from donors. According to the MYA, 90% of unemployed youth had no technical skills.

The government's free primary education program (FPE), begun in 2003, raised the number of children enrolled to more than 7.6 million. However, Education minister George Saitoti said in October 2007 that nearly a million children are still out of class, particularly in arid/pastoral areas and in slums, the majority of classrooms in the country's 18,000 primary schools are overcrowded, and most schools continue to experience shortages of teachers. In FY2006-07, the GOK allocated Ksh 108.3 billion (about \$1.77 billion) to education in the national budget, and raised that by 11% in FY 2007-08 to Ksh 119.5 billion (about \$1.84 billion). The GOK is also considering introducing mobile schools to help increase the number of children in school, particularly in arid/pastoral areas. The GOK believes that FPE is among its most important tools for fighting child labor and poverty. The government announced it would end tuition charges at the secondary level in 2008, and would work towards reducing or eliminating other costs of primary and secondary education that lead to child labor, rather than school attendance.

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